



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

February 19, 1957

Honorable Coke R. Stevenson, Jr.
Administrator
Texas Liquor Control Board
Austin, Texas

Opinion No. WW-25

Re: Whether or not the following constitute a 'breach of the peace' as that term is used in Section 49a and Section 21 of the Liquor Control Act.

- 1.) Permitting an intoxicated person to remain on the licensed premises
- 2.) The sale of alcoholic beverages to an intoxicated person.
- 3.) Permitting a person under the age of twenty-one years to possess or consume an alcoholic beverage on the licensed premises when such person is not accompanied by the parent, adult spouse or legal guardian.
- 4.) The sale of alcoholic beverages to persons under the age of twenty-one years.

Dear Mr. Stevenson:

This will acknowledge receipt of your inquiry dated January 18th, 1957, as follows:

"The Texas Liquor Control Act provides for the issuance of a summary suspension by the Board or the Administrator where it is shown that a breach of the peace has occurred on the licensed premises of a

"Package Store or Medicinal Permit. See Article 666-49a, Vernon's Penal Code of Texas. The Act further provides for the issuance of a summary suspension where it is shown that a breach of the peace has occurred on the premises of any establishment operating under a beer license. See Article 667-21, Vernon's Penal Code of Texas.

"A question has arisen as to what constitutes a 'breach of the peace' so as to entitle the Board or Administrator to issue a summary suspension. In an effort to clarify this question, I respectfully request your valuable opinion as to whether or not the following constitute a 'breach of the peace' as that term is used in Section 49a and Section 21 referred to above.

"1.) Permitting an intoxicated person to remain on the licensed premises.

"2.) The sale of alcoholic beverages to an intoxicated person.

"3.) Permitting a person under the age of twenty-one years to possess or consume an alcoholic beverage on the licensed premises when such person is not accompanied by the parent, adult spouse or legal guardian.

"4.) The sale of alcoholic beverages to persons under the age of twenty-one years.

"These questions are not the subject of any pending or proposed litigation."

Inasmuch as each of the four questions submitted are included and specially set out in Articles 666-12 and 667-19, which authorize the Administrator to cancel or suspend after notice and hearing where such acts have been committed or permitted, it is our opinion that the acts specified in your inquiry do not constitute a breach of the peace as that term is used in Article 666-49a and Article 667-21, even though they might constitute a breach of the peace at common law or as that term is commonly understood. Where the statute spells out that the licensee should have a notice and hearing before suspension because of such matters, the Administrator would, in our opinion

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be without power to summarily suspend a license under the general language contained in Articles 666-49a and 667-21 in Vernon's Penal Code of Texas.

SUMMARY

Permitting an intoxicated person to remain on the licensed premises, the sale of alcoholic beverages to an intoxicated person, permitting a person under the age of twenty-one years to possess or consume an alcoholic beverage on the licensed premises when such person is not accompanied by the parent, adult spouse or legal guardian and the sale of alcoholic beverages to persons under the age of twenty-one years are not acts which will support a summary suspension under Articles 666-49a and 667-21, Vernon's Penal Code of Texas.

Yours very truly,

WILL WILSON
Attorney General

By

J. W. Wheeler
Assistant

JWW:ms

APPROVED:

OPINION COMMITTEE
H. Grady Chandler
Chairman